

SERVED: March 1, 2000

NTSB Order No. EA-4830

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 25th day of February, 2000

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15444
v.)	
)	
BLUE RIDGE AIRLINES, INC.,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

On March 11, 1999, Administrative Law Judge Patrick G. Geraghty served a Decisional Order¹ in this case that, among other things, granted the Administrator's unanswered motion for summary judgment on a complaint that sought revocation of respondent's Air Carrier Operating Certificate because, for the most part, respondent allegedly did not have, and had not had

¹A copy of the law judge's order is attached. It sets forth in detail the allegations in the Administrator's order, which served as the complaint in this proceeding, and the applicable Federal Aviation Regulations (FAR).

since at least June of 1998, an aircraft with which to provide service.² Respondent has filed an appeal from that order which, without addressing any of the law judge's reasons for affirming revocation, seeks to have the order overturned because no hearing was held.³ Because we find that respondent has not identified any abuse of discretion in connection with the law judge's conclusion that no hearing was necessary, the respondent's appeal will be denied.⁴

As noted, respondent's appeal does not undertake to demonstrate error in the law judge's determination to affirm revocation on the pleadings before him. Rather, its appeal appears to take the position that the law judge would have decided the matter differently if respondent had had the opportunity to advance evidence on the merits of the

²The Administrator, who by counsel filed a reply brief opposing respondent's appeal, also alleged that respondent had not allowed her to inspect its aircraft since October of 1997.

³As a consequence of respondent's failure to keep the Board apprised of an address or telephone number at which it could receive timely advice or notice of developments in its appeal, respondent's president did not learn that the hearing had been cancelled until he appeared at the vacant hearing site at the time and on the date for which it had been originally set.

⁴Subsequent to its appeal brief, the respondent has filed other documents which appear to seek the Board's permission to conduct operations during the pendency of this appeal. We do not know whether these documents, which indicate service on the Administrator, were so served, as the record suggests that the Administrator has not received all of respondent's filings despite certifications of service on her counsel. In any event, no leave to file the documents was sought, and they will not be entertained. At the same time, respondent's attention is directed to the automatic stay provisions of Section 821.43 of our Rules of Practice, 49 C.F.R. Part 821.

Administrator's charges at the hearing that, until cancelled by the law judge's March 11 order, had been scheduled for March 16, 1999.⁵ Respondent's appeal brief, however, discloses no information suggesting that the law judge's decision would have been any different had a hearing been conducted. It simply asserts, in conclusory fashion, that respondent does have evidence, to contradict the Administrator's charges, that it intended to advance at the hearing. If respondent does possess such evidence, it should have participated in the prehearing process in a manner that would have preserved its opportunity to present it to the law judge for his consideration. The record reflects that it did not.

Respondent effectively forfeited its right to a hearing by neglecting to prosecute its appeal from the Administrator's complaint in a diligent manner; specifically, respondent failed to respond to reasonable discovery requests concerning, inter alia, the existence of an aircraft for its use in Part 135 operations, despite the law judge's direction that it do so or suffer a sanction for noncompliance. That failure convinced the law judge to grant the Administrator's motion to deem as admitted the allegation, among others, that "from on or about June 15, 1998 until the present, Blue Ridge has failed to maintain exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in its

⁵Respondent is represented by Douglas E. Haynes, its president.

operations specifications.”⁶ If respondent wanted to contest or deny this allegation in whole or in part, it needed only to so state in reply to the discovery request the law judge ordered it to answer. Given respondent’s unexplained silence in the face of that directive, the law judge could reasonably decide to dispense with a hearing procedure designed to resolve conflicts in the parties’ positions on matters in controversy. Respondent will not now be heard to complain, in effect, that the law judge should have ignored its inaction or noncompliance, and convened a hearing that no longer appeared necessary.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent’s appeal is denied; and
2. The decision of the law judge is affirmed.

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁶By order served February 9, 1999, the law judge had given respondent until February 26 to admit or deny this allegation.